

No. 21-1653

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

ALLERGAN LIMITED, ALLERGAN, INC. AND MEDYTOX, INC.,
Petitioners-Appellants,

v.

UNITED STATES INTERNATIONAL TRADE COMMISSION,
Respondent-Appellee.

ON APPEAL FROM THE UNITED STATES INTERNATIONAL TRADE
COMMISSION,
INVESTIGATION NO. 337-TA-1145

**APPELLANTS' UNOPPOSED MOTION FOR LEAVE TO FILE
OPPOSITION TO EMERGENCY MOTION FOR INTERIM STAY AND
PARTIAL OPPOSITION TO EMERGENCY MOTION TO INTERVENE
OUT OF TIME**

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Counsel for Medytox, Inc.

FORM 9. Certificate of Interest

Form 9 (p. 1)
July 2020

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

CERTIFICATE OF INTEREST

Case Number 21-1653

Short Case Caption Allergan Limited v. ITC

Filing Party/Entity Allergan Limited and Allergan, Inc.

Instructions: Complete each section of the form. In answering items 2 and 3, be specific as to which represented entities the answers apply; lack of specificity may result in non-compliance. **Please enter only one item per box; attach additional pages as needed and check the relevant box.** Counsel must immediately file an amended Certificate of Interest if information changes. Fed. Cir. R. 47.4(b).

I certify the following information and any attached sheets are accurate and complete to the best of my knowledge.

Date: 02/15/2021

Signature: /s/ Jeffrey T. Thomas

Name: Jeffrey T. Thomas

FORM 9. Certificate of Interest

Form 9 (p. 2)
July 2020

1. Represented Entities. Fed. Cir. R. 47.4(a)(1).	2. Real Party in Interest. Fed. Cir. R. 47.4(a)(2).	3. Parent Corporations and Stockholders. Fed. Cir. R. 47.4(a)(3).
Provide the full names of all entities represented by undersigned counsel in this case.	Provide the full names of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities. <input checked="" type="checkbox"/> None/Not Applicable	Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities. <input type="checkbox"/> None/Not Applicable
Allergan Limited		indirect subsidiary of AbbVie Inc.
Allergan, Inc.		indirect subsidiary of AbbVie Inc.

☐ Additional pages attached

FORM 9. Certificate of Interest

Form 9 (p. 3)
July 2020

4. Legal Representatives. List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court. Fed. Cir. R. 47.4(a)(4).

☐ None/Not Applicable ☒ Additional pages attached

Gibson, Dunn & Crutcher LLP		
DLA Piper LLP		

5. Related Cases. Provide the case titles and numbers of any case known to be pending in this court or any other court or agency that will directly affect or be directly affected by this court's decision in the pending appeal. Do not include the originating case number(s) for this case. Fed. Cir. R. 47.4(a)(5). See also Fed. Cir. R. 47.5(b).

☒ None/Not Applicable ☐ Additional pages attached

6. Organizational Victims and Bankruptcy Cases. Provide any information required under Fed. R. App. P. 26.1(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees). Fed. Cir. R. 47.4(a)(6).

☒ None/Not Applicable ☐ Additional pages attached

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Case Number 21-1653

Short Case Caption Allergan Limited v. ITC

Filing Party/Entity Medytox, Inc.

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I certify the following information and any attached sheets are accurate and complete to the best of my knowledge.

Date: 02/15/2021

Signature: /s/ David H. Herrington

Name: David H. Herrington

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July 2020

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Provide the full names of all entities represented by undersigned counsel in this case.	Provide the full names of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities. <input checked="checked" type="checkbox"/> None/Not Applicable	Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities. <input type="checkbox"/> None/Not Applicable
Medytox, Inc.		

☐ Additional pages attached

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☐ None/Not Applicable

☐ Additional pages attached

Cleary Gottlieb Steen & Hamilton LLP		
Law Office of Spence T. Chubb		

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Counsel for Medytox, Inc.

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Law Office of Spence T. Chubb:

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Appellants Allergan Limited, Allergan, Inc. (together “Allergan”) and Medytox, Inc. (“Medytox”) (together “Appellants”) respectfully move this Court pursuant to Federal Rule of Appellate Procedure 27 and Federal Circuit Rule 27 for leave to file Appellants’ Opposition to Emergency Motion for Interim Stay and Partial Opposition to Emergency Motion to Intervene (“Opposition”), in response to the Court’s Order (ECF 10) requesting briefing on the issues raised in those motions, out of time. Due to technical errors described below, the public version of the Opposition was filed three minutes after the deadline and the confidential version of the Opposition was served twelve minutes after – and filed fifteen minutes after – the deadline.

Pursuant to the Court’s February 14, 2021 Order (ECF 10), Appellants’ responses to Daewoong Pharmaceutical Co., Ltd. (“Daewoong”) and Evolus, Inc.’s (“Evolus”) Emergency Motion for Leave to Intervene and Emergency Motion for Interim Stay were due by 12:00 p.m. ET on February 15, 2021. Appellants made every effort to meet this deadline set by the Court, but unfortunately, due to technical errors explained below, ultimately filed the public version of their Opposition at 12:03 p.m. ET and the confidential version of their Opposition at 12:15 p.m. ET.

Appellants encountered the following technical error: Through the course of converting the Opposition to the correct format for filing, certain fields (and information within those fields) in the Table of Contents became corrupted. This,

in turn, created issues with uploading the documents on the PACER system. Appellants corrected these technical issues sufficient to allow the document to be successfully uploaded and filed through PACER, although errors continued to be present in the Table of Contents. In addition, after filing, Appellants noticed that an incorrect Certificate of Interest was appended to the Confidential version. Although these errors were non-substantive, and in an abundance of caution, Appellants filed a Notice of Correction and corrected public and confidential versions of its Opposition by 2:16 p.m. ET, pursuant to Federal Circuit Rule 32. (ECF Nos. 17, 18, 19).

Counsel for Evolus, Daewoong, and Appellee received, via ECF, the public version with no more than ten words redacted, when it was filed at 12:03 p.m. ET. Recognizing that the technical error was further delaying Appellants' ability to file the confidential version, Appellants separately served by email (pursuant to prior written agreement) the confidential version and a courtesy copy of the previously filed public version on Counsel for Evolus, Daewoong, and Appellee at 12:12 p.m. ET (i.e., nine minutes after the public version was served via ECF and three minutes before the confidential version was able to be filed on PACER).

Appellants apologize for their error and submit that good cause exists to grant this Motion. Counsel for Appellants worked diligently to meet a tight deadline set by the Court regarding an emergency motion and worked to serve their briefs on

Counsel for Evolus, Daewoong, and Appellee as quickly as possible after discovering the technical error, resulting in only a three-minute delay of filing and service of the public version and a twelve minute delay in service of the confidential version.

Counsel for Daewoong, Evolus, and Appellee have stated that they consent to the relief requested and do not believe they suffered any prejudice.

Dated: February 15, 2021

Respectfully submitted,

GIBSON, DUNN & CRUTCHER LLP CLEARY GOTTSLIEB STEEN &
HAMILTON LLP

By: /s/ Jeffrey T. Thomas (with
permission)

By: /s/ David H. Herrington

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CERTIFICATE OF SERVICE

I, David H. Herrington, certify that on February 15, 2021, a copy of the foregoing was served on the following in the manner so indicated:

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Dated: February 15, 2021

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CERTIFICATE OF COMPLIANCE

I hereby certify that:

1. This document complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 534 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f) and Federal Circuit Rule 27(d).

2. This document complies with the typeface and the type-style requirements of Federal Rules of Appellate Procedure 27(d)(1)(E), 32(a)(5), and 32(a)(6), as the text appears in 14-point Times New Roman font, a proportionally spaced typeface.

Dated: February 15, 2021

Respectfully submitted,

/s/ David H. Herrington

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